September 30, 2010

Dr. Al Armendariz
Regional Administrator, Region 6
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Mr. Mark Vickery, P.G.
Executive Director
Texas Commission on Environmental Quality
12100 Park 35 Circle, Mailcode 109
Austin, TX 78753

RE: Comments on Draft Process for Transitioning Texas Subchapter G Flexible Permits to Subchapter B NSR SIP-Approved Permits

Dear Dr. Armendariz and Mr. Vickery:

On behalf of the Texas Chemical Council (TCC), the Texas Oil & Gas Association (TxOGA), the Texas Association of Manufacturers (TAM) and the Texas Association of Business (TAB) (hereinafter referred to collectively as "the Associations"), please find the following comments to the U.S. Environmental Protection Agency (EPA) and the Texas Commission on Environmental Quality (TCEQ) on the proposed "Process for Transitioning Texas Subchapter G Flexible Permits to Subchapter B NSR SIP-Approved Permits" (Process) as presented by EPA on September 16, 2010.

TCC is a statewide trade association representing 68 chemical manufacturers with more than 200 Texas facilities. The Texas chemical industry has invested more than $50 billion in physical assets in the state, pays over $1 billion annually in state and local taxes and over $20 billion in federal income taxes. TCC's members provide approximately 70,000 direct jobs and over 400,000 indirect jobs to Texans across the state. The products manufactured in Texas account for 60 percent of the U.S. chemical production, which go into millions of consumer products that are distributed and sold throughout the world. Chemical products are the state's largest export at over $30 billion each year.

TxOGA, the largest and oldest oil and gas association in Texas, represents 4,000 members of the oil and gas industry. The membership of TxOGA produces in excess of 90 percent of Texas' crude oil and natural gas, operates 95 percent of the state's refining capacity, and is responsible for a vast majority of the state's pipeline mileage. The oil and gas industry employs 189,000

Texans, providing payroll and benefits of over $22 billion. In addition, large associated capital investments by the oil and gas industry generate significant secondary economic benefits for Texas.

TAM represents 480 large and small companies from every manufacturing sector, employing approximately 900,000 Texans with an average compensation of $63,000 a year (the highest in the private sector). Texas manufacturers contribute $96 billion annually to the Texas economy and one-third of all corporate taxes collected by state and local governments. Sixty-two percent of all U.S. exports are manufactured goods, and Texas has held the distinction as the largest exporting state in the U.S. for seven consecutive years.

Founded in 1922, TAB is a broad-based, bipartisan organization representing more than 3,000 small and large Texas employers and 200 local chambers of commerce.

The Associations appreciate the opportunity to comment on the proposed Process and continue to maintain that the Texas Flexible Permit Program is a valid, federally-enforceable program that should be approved into the state implementation plan (SIP), as evidenced by how drastically air quality has improved in Texas over the past 15 years. For example, because of the Flexible Permit Program, nitrogen oxide emissions have decreased by 260,000 tons across the state. We commend the TCEQ staff for their tireless efforts to propose sensible solutions to de-flex existing flexible permits within the parameters of TCEQ's current rules, and we appreciate EPA's efforts as well.

At the outset, the Associations note that there are a variety of viewpoints within our memberships as to the merits of the proposed Process. While we note several comments and concerns with the proposed Process below, the Associations have some members who support the proposed Process, and we encourage our members to continue seeking solutions with EPA and TCEQ that work best for each of their individual situations. We also encourage EPA and TCEQ to finalize a de-flex proposal that is workable for the state agency and for Texas businesses within current SIP-approved rules. One option not mentioned or discussed would be to allow companies the flexibility to tailor a proposal to de-flex their permits in a manner that makes business sense for each company's individual facilities and without fear of enforcement for merely possessing a flexible permit. If EPA's true intent is to have federal SIP-approved flexible permits, enforcement should not be part of *any* proposed de-flex process in those instances where circumvention of major New Source Review (NSR) has not occurred. We encourage Dr. Armendariz to add this de-flex option to the list of those outlined in the September 20, 2010 letter sent to flexible permit holders across the state.

In the cases of companies with flexible permits that can demonstrate that their facility's emissions under the flexible permit cap have decreased over the life of the permit *or* in those cases where a facility has a combination Prevention of Significant Deterioration (PSD) permit and flexible permit, we believe that the transition from a Subchapter G to a Subchapter B permit should be a simple exercise using the SIP-approved alteration process. In those cases where a company's emissions under the flexible permit cap have increased, the Associations believe that this proposed process is still unnecessary because EPA has all the information necessary to

enforce against those companies based on each company's recent responses to EPA's Section 114 request letters. The Associations also believe that each company's Section 114 responses to EPA obviate the need for any kind of historical look-back altogether since EPA already has in its possession the information that it is seeking through this proposal.

Assuming that EPA chooses to go forward with finalizing a process with TCEQ to transition flexible permits to NSR SIP-approved permits using this proposal as a basis, the Associations offer the following comments on the proposed EPA process. However, given the serious nature of the proposal, we believe that more time for comment and a more transparent process would be beneficial.

Step 1 Comments

First, the Associations offer an alternative to Step 1 that would simply allow companies to provide a certified commitment and schedule to de-flex their permits, via letter to EPA and TCEQ that TCEQ could post on its website. In the alternative, with respect to the proposed Process, we believe that the majority of Step 1 is unnecessary. The only aspect of Step 1 that the Associations support retaining in this proposal is subpart (a), which requires the Permittee to submit to TCEQ a request for a minor permit revision to its Title V permit. The only notice that should be required under Step 1 is notice that the Permittee has made the request and that it will comply with the schedule. Public comment opportunities are provided elsewhere in the proposed Process already, and additional public comment at this stage is unnecessary as it will likely result in comments on other aspects of the Title V permit.

Second, the schedule that EPA has proposed does not give companies ample time to de-flex given the requirements of this proposed process. The Associations support a schedule of 18 months, with the option of a 12-month extension, to allow the Permittee to submit a draft Subchapter B permit amendment application to TCEQ.

Third, the interim report required in Step 1 is also not necessary. The information that EPA is seeking in the interim report has already been provided to EPA in the Section 114 responses.

Step 2 Comments

First, the Associations vehemently oppose an analysis of all other minor NSR permits, authorizations and programs other than the flexible permit program. This proposed process should be strictly limited to those emissions authorized under each facility's flexible permit and should not incorporate an analysis of emissions authorized under Permits by Rule (PBRs), the qualified facilities program, standard permits, case-by-case NSR, or any other minor NSR programs that are state-only programs.

Second, with regard to the analysis being sought in subpart (b), the Associations would like clarification as to what the term "analysis" means. It is important to note that the Associations do not support a definition that includes a re-analysis of applicability requirements. Additionally, in subpart (b)(3), the Associations are unclear as to what information EPA is seeking. For example, EPA might be looking for numerical emission limits that exceed the

maximum allowable emissions rate table (MAERT). If so, then the Associations would like confirmation of this point.

Third, the Associations disagree with EPA's timing of the historical analysis. In accordance with Title V rules, companies typically have a record retention policy of five (5) years, reflecting the applicable federal statute of limitations period, and it would be very difficult to do a proper historical analysis, particularly within the schedule proposed, of any longer period of time. Furthermore, the consent decree analysis mentioned in subpart (g), specifically with regard to how a consent decree might impact the timing of the historical analysis, is noticeably absent from the historical analysis requirements outlined in subpart (c). The effective date of a consent decree for individual emission units or groups of emission units covered by the flexible permit should be the starting point in time under subpart (c), as well as under subpart (g).

Fourth, as mentioned previously, if a facility can demonstrate that its emissions under the flexible permit cap have decreased over the life of the permit *or* in those cases where a facility has a combination PSD permit and flexible permit, the historical analysis is unnecessary.

Fifth, under subpart (d), the Associations do not agree with EPA's assumption that if a facility made changes under its flexible permit, it "should have undergone NSR review." Furthermore, with regard to the proposed NSR analysis under Step 2, we are unclear as to whether EPA is seeking an NSR analysis of major NSR, minor NSR or both. The Associations contend that minor NSR review should *not* be part of the NSR analysis required under subpart (d). Furthermore, the Associations are unclear whether EPA expects this NSR analysis to include sources that no longer exist, are no longer operational, those that have been sold or are under a flexible permit but not subject to an emissions cap, and we would appreciate additional clarification on this point. It is our belief that these types of sources should not be included in the NSR analysis. Finally, EPA's requirement in subpart (d)(9) that companies provide all copies of PSD BACT and/or LAER analyses performed by the Permittee is also unnecessary since that information was also collected by EPA in the Section 114 responses.

Sixth, the Associations seek clarification as to the information that EPA is seeking in the federal standard analysis discussed in subpart (e). For example, the Associations seek clarification as to whether EPA is asking for mass emission limits or concentration limits in this request.

<u>Step 3 Comments</u>

First, as it is unclear under subpart (b)(2) in Step 3, the Associations would like clarification from EPA as to whether it intends to approve any type of emissions caps in permits. Specifically, if EPA intends to approve Plantwide Applicability Limits (PALs) in permits going forward, the Associations would appreciate confirmation of this point. The Associations would also like clarification as to how use of the 9 percent insignificance factor will be viewed by EPA. In cases where flexible permit caps today are significantly lower than their original flexible permit caps, any allegation that emission increases were allowed with the 9 percent factor is unfounded.

Second, under subpart (c)(3), the Associations would like it made clear how state BACT will be determined for grandfathered sources which may have undergone minor modifications under 30 TAC § 116.718 or through use of the qualified facility rules as allowed under 30 TAC § 116.118.

Third, under subpart (c)(4), the Associations recommend that the language be amended to clarify that modeling will absolutely not be required in the process of transitioning a flexible permit to a Subchapter B permit.

Fourth, under subpart (c)(6), EPA states that, "Regardless of whether an amendment application triggers the requirements of 30 TAC § 39.402(a)(3)(A), (B), or (C), all amendment applications shall be subject to public notice under 30 TAC § 39.402(a)(3)(D)(iv) because there is a reasonable likelihood of significant public interest in all amendment applications subject to the process set out in this document." The Associations assert that because the rules that EPA cites here have not yet been SIP-approved, they may not be invoked by EPA in implementing the current SIP-approved process. As a result, public notice and comment should not be required if a company chooses to use the alteration process to de-flex its permit in those cases where there has not been an increase in emissions during the life of its flexible permit.

Fifth, under subpart (c)(7), the Associations seek clarification from EPA as to whether the circumvention of major NSR, if discovered in the historical analysis during the transition from flexible permits to NSR SIP-approved permits, will trigger NSR requirements for greenhouse gas rules after January 2, 2011.

Sixth, under subpart (c)(9), the Associations recommend that the language be amended to clarify that each agency reserves the right to take enforcement only in those cases where it is determined that *major* NSR requirements were not met.

Step 4 Comments

First, the Associations comment that the timing proposed under subpart (a) for a Permittee to submit a Title V revision to TCEQ is not sufficient. Instead of requiring that the application be submitted within 30 days, the Associations support a 90-day timeframe. This is more realistic given the limited availability of consultants and the fact that many companies could be in need of their services at the same time.

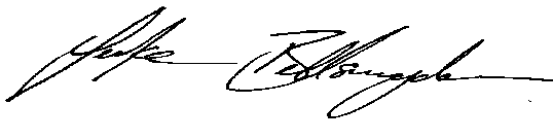
Second, EPA has incorrectly lettered the subparts of Step 4, and these need to be corrected.

Third, under what should be listed as subpart (d), EPA mentions the incorporation by reference (IBR) issue with the assumption that the issue is resolved or will be readily resolved. The Associations would like guidance from EPA and TCEQ as to when this issue will be resolved and whether it will be timely for facilities that will undergo a de-flex process.

As we have stated before, the Associations represent businesses that have operated in an environmentally responsible manner and wish to further continue their successful operations in the State of Texas. We urgently request that EPA understand the importance of a sound regulatory structure and work with us and TCEQ to resolve any impediments to the certainty upon which we depend in a fair, constructive and expeditious manner.

Yours respectfully,

Christina T. Wisdom
Vice President & General Counsel
Texas Chemical Council



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